

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **August 8, 2006**

AGENDA ITEM NO.: 15

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Repeal Section 7-35.1 of the City Code dealing with Dangerous or Vicious Dogs**

RECOMMENDATION: Repeal Section 7-35.1 of the City Code.

SUMMARY: In 1993 the State adopted legislation allowing localities to adopt local ordinances regulating dangerous or vicious dogs. At that time there was no statewide regulation of dangerous or vicious dogs. The City adopted such an ordinance on December 12, 1994. Since 1993 the State laws concerning the regulation of dangerous or vicious dogs were amended to apply throughout the Commonwealth. Localities are still allowed to adopt local ordinances if they wish, but such ordinances must parallel the provisions of the State Code. The only advantage to having a local ordinance is that the City keeps the fines imposed for violations of local ordinance, while fines imposed for violations of State law go to the Commonwealth. The Animal Warden advises that the City has not collected any fines for dangerous or vicious dog violations during the past five years.

During the 2006 Session of the General Assembly, the provisions of the State Code dealing with dangerous or vicious dogs were amended to provide that if the owner or custodian of an dog fails to properly control or contain their dog and the dog attacks and causes a serious injury to a person the owner or custodian can be charged with a Class 6 Felony. However, violations of local ordinances can only be punished as misdemeanors. Since the punishment for violating the City Code is less than the punishment imposed for violating the State Code, it is appropriate to consider repealing Section 7-35.1 of the City Code. Individuals that fail to maintain proper control of their dogs will be charged with violating the State Code and will face the maximum punishment allowed for such an offense. The Animal Warden has considered this matter and supports the repeal of Section 7-35.1 of the City Code.

PRIOR ACTION(S): The City's Dangerous/Vicious Dog Ordinance was originally adopted on December 12, 1994 and has been amended from time-to-time to keep it current with State law.

FISCAL IMPACT: None

CONTACT(S): Walter C. Erwin, 455-3973

ATTACHMENT(S): An ordinance repealing Section 7-35.1 of the City Code.

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF LYNCHBURG, 1981, BY REPEALING SECTION 7-35.1 , THE REPEALED SECTION RELATING TO DANGEROUS OR VICIOUS DOGS .

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended by repealing Section 7-35.1. Dangerous or vicious dogs.
2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified:

Clerk of Council

089P

LYNCHBURG CITY CODE

Sec. 7-35.1. Dangerous or vicious dogs.

(a) As used in this section: "dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person, companion animal, livestock or any other animal, or killed a companion animal, livestock or any other animal; however, when a dog attacks or bites another dog, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the other dog as a result of the attack or bite or (ii) both dogs are owned by the same person. No dog shall be found to be a dangerous dog as a result of biting, attacking or inflicting injury on another dog while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or an animal warden that it is a dangerous dog, provided that its owner has been given notice of that finding.

"Owner" means the current owner and any future owner of a dangerous or vicious dog.

(b) Any animal warden who has reason to believe that a canine or canine crossbreed within the city is a dangerous dog or vicious dog shall apply to a magistrate of the city for the issuance of a summons requiring the owner or custodian, if known, to appear before the general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. The animal warden shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal is confined by the animal warden the owner shall be responsible for paying all the costs of such confinement. If the animal warden determines that the owner or custodian can confine the dog in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of Section 3.1-796.119 of the Code of Virginia.

(c) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog which was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a dangerous dog or a vicious dog.

(d) The owner of any animal found by a court to be a dangerous dog shall, within ten (10) days of such finding, obtain a dangerous dog registration certificate from the city collector for a fee of one hundred and fifty dollars (\$150.00) in addition to other fees that may be authorized by law. The city collector shall also provide the owner with a uniformly designed tag which identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this section shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.

(e) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen (18) years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, and (ii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation and (iii) the animal has been neutered or spayed.

(f) While on the property of its owner, an animal found by a court to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found by a court to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(g) If the owner of an animal found by a court to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(h) After an animal has been found by a court to be a dangerous dog, the animal's owner shall immediately, upon learning of same, notify the local animal control authority if the animal (i) is loose or unconfined; (ii) bites a person or attacks another animal; (iii) is sold, given away, or dies; or (iv) has been moved to a different address.

(i) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least one hundred thousand dollars (\$100,000) that covers animal bites.

(j) Notwithstanding the provisions of paragraph (b) of this section, an animal warden may determine, after investigation, whether a dog is a dangerous dog or vicious dog. If the animal warden determines that a dog is a dangerous dog or vicious dog, he may order the animal's owner to comply with the provisions of this section. If the animal's owner disagrees with the animal warden's determination, he may appeal the determination to the general district court for a trial on the merits, such appeal must be taken within ten (10) days of the animal warden's determination. Until the general district court makes a finding that a dog is not a dangerous dog or vicious dog the animal's owner shall comply with the provisions of this section.

(k) The owner of any animal which has been found by a court to be a dangerous dog or vicious dog who willfully fails to comply with the requirements of the ordinance shall be guilty of a class 1 misdemeanor.

(l) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund for the purpose of paying the expenses of any training course required under Section 3.1-796.105 of the Code of Virginia.

CODE OF VIRGINIA

§ 3.1-796.93:1. Control of dangerous or vicious dogs; penalties.

A. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite, (ii) if both animals are owned by the same person, (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian, or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by local ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § [3.1-796.119](#). The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ [19.2-260](#) et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.

D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee of \$50, in addition to other fees that may be authorized by law. The local animal control officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. The animal control officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.

F. All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

G. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry, as established under § [3.1-796.93:3](#), within 45 days of such a finding by a court of competent jurisdiction.

The owner shall also cause the local animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any training course required under [§ 3.1-796.104:1](#).

M. The governing body of any locality may enact an ordinance parallel to this statute regulating dangerous and vicious dogs; provided, however, that no locality may impose a felony penalty for violation of such local ordinances.